

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

**DIVISION OF WATER RIGHTS**

**ORDER**

Application 29495 Permit 20639 License           

**ORDER APPROVING A NEW DEVELOPMENT SCHEDULE, ADDING  
ENDANGERED OR THREATENED SPECIES TERM, AND AMENDING THE  
PERMIT**

**WHEREAS:**

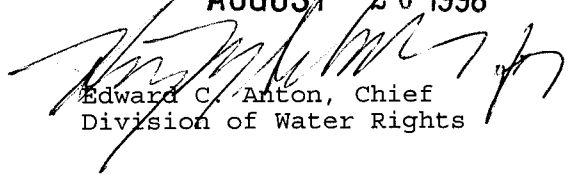
1. Permit 20639 was issued to Michael J. Marston on October 2, 1992.
2. A petition for an Extension of Time in which to develop the project and apply the water to the proposed use was been filed with the State Water Resources Control Board on February 2, 1998.
3. The permittee has proceeded with diligence and good cause has been shown for said extension of time.
4. Fish or wildlife species have been or may be listed under the federal Endangered Species Act and/or the California Endangered Species Act.

**NOW, THEREFORE, IT IS ORDERED THAT:**

1. A new development schedule is approved as follows:  
  
Complete application of the water to the proposed use shall be made by December 31, 2008. (0000009)
2. The addition of Paragraph 8 to read as:  
  
This permit does not authorize any act which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Game Code sections 2050 to 2097) or the federal Endangered Species Act (16 U.S.C.A. sections 1531 to 1544). The permittee should seek guidance from the Endangered Species Act agency on whether an incidental take permit is advisable for this activity and pursue obtaining such a permit as appropriate.

(Endangered or Threatened Species Term)

Dated: **AUGUST 20 1998**

  
Edward C. Anton, Chief  
Division of Water Rights

STATE OF CALIFORNIA  
WATER RESOURCES CONTROL BOARD  
DIVISION OF WATER RIGHTS

PERMIT FOR DIVERSION AND USE OF WATER

PERMIT 20639

Application 29495 of Michael J. Marston

3375 Jackson Street, San Francisco, CA 94118

filed on May 15, 1989, has been approved by the State Water Resources Control Board SUBJECT TO VESTED RIGHTS and to the limitations and conditions of this Permit.

Permittee is hereby authorized to divert and use water as follows:

1. Source:

Tributary to:

<u>(1), (2) Sulphur Creek</u>	<u>Napa River</u>
<u>(3) Unnamed Stream</u>	<u>Sulphur Creek thence</u>
<u></u>	<u>Napa River</u>
<u></u>	<u></u>
<u></u>	<u></u>
<u></u>	<u></u>

2. Location of point of diversion:	40-acre subdivision of public land survey or projection thereof	Section	Township	Range	Base and Meridian
ALL POINTS IN CALIFORNIA COORDINATE SYSTEM ZONE 2					
POINT OF DIVERSION TO OFFSTREAM STORAGE: (1) N 300,000' E 1,854,650'	SW $\frac{1}{4}$ OF NE $\frac{1}{4}$	3	7N	6W	MD
POINT OF DIVERSION TO OFFSTREAM STORAGE: (2) N 301,400' E 1,850,450'	NE $\frac{1}{4}$ OF NE $\frac{1}{4}$	4	7N	6W	MD
UNNAMED RESERVOIR: (3) N 301,350' E 1,852,050'	NW $\frac{1}{4}$ OF NW $\frac{1}{4}$	3	7N	6W	MD

County of Napa

3. Purpose of use:	4. Place of use:	Section	Township	Range	Base and Meridian	Acre
DOMESTIC						
IRRIGATION	NW $\frac{1}{4}$ OF NW $\frac{1}{4}$	3	7N	6W	MD	25
	SW $\frac{1}{4}$ OF NW $\frac{1}{4}$	3	7N	6W	MD	10
	SE $\frac{1}{4}$ OF NW $\frac{1}{4}$	3	7N	6W	MD	5
	NE $\frac{1}{4}$ OF NW $\frac{1}{4}$	3	7N	6W	MD	5
	NE $\frac{1}{4}$ OF NE $\frac{1}{4}$	4	7N	6W	MD	5
					TOTAL	50

The place of use is shown on map on file with the State Water Resources Control Board.

5. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 35 acre-feet per annum to be collected from October 1 of each year to April 15 of the succeeding year. (0000005)

This permit does not authorize collection of water to storage outside of the specified season to offset evaporation and seepage losses or for any other purpose. (000005I)

The maximum rate of diversion to offstream storage shall not exceed 1.5 cubic feet per second. (000005J)

6. The amount authorized for appropriation may be reduced in the license if investigation warrants. (0000006)

7. Construction work shall begin within two years of the date of this permit and shall thereafter be prosecuted with reasonable diligence, and if not so commenced and prosecuted, this permit may be revoked. (0000007)

8. Construction work shall be completed by December 31, 1995. (0000008)

9. Complete application of the water to the authorized use shall be made by December 31, 1996. (0000009)

10. Progress reports shall be submitted promptly by permittee when requested by the State Water Resources Control Board until a license is issued. (0000010)

11. Permittee shall allow representatives of the State Water Resources Control Board and other parties, as may be authorized from time to time by said Board, reasonable access to project works to determine compliance with the terms of this permit. (0000011)

12. Pursuant to California Water Code Sections 100 and 275, and the common law public trust doctrine, all rights and privileges under this permit and under any license issued pursuant thereto, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the State Water Resources Control Board in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water.

The continuing authority of the Board may be exercised by imposing specific requirements over and above those contained in this permit with a view to eliminating waste of water and to meeting the reasonable water requirements of permittee without unreasonable draft on the source. Permittee may be required to implement a water conservation plan, features of which may include but not necessarily be limited to: (1) reusing or reclaiming the water allocated; (2) using water reclaimed by another entity instead of all or part of the water allocated; (3) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (4) suppressing evaporation losses from water surfaces; (5) controlling phreatophytic growth; and (6) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this permit and to determine accurately water use as against reasonable water requirements for the authorized project. No action will be taken pursuant to this paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation.

The continuing authority of the Board also may be exercised by imposing further limitations on the diversion and use of water by the permittee in order to protect public trust uses. No action will be taken pursuant to this paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such action is consistent with California Constitution Article X, Section 2; is consistent with the public interest and is necessary to preserve or restore the uses protected by the public trust. (0000012)

13. The quantity of water diverted under this permit and under any license issued pursuant thereto is subject to modification by the State Water Resources Control Board if, after notice to the permittee and an opportunity for hearing, the Board finds that such modification is necessary to meet water quality objectives in water quality control plans which have been or hereafter may be established or modified pursuant to Division 7 of the Water Code. No action will be taken pursuant to this paragraph unless the Board finds that (1) adequate waste discharge requirements have been prescribed and are in effect with respect to all waste discharges which have any substantial effect upon water quality in the area involved, and (2) the water quality objectives cannot be achieved solely through the control of waste discharges. (0000013)

14. Permittee shall comply with the following provisions which are derived from the agreement between permittee and the California Department of Fish and Game (Department) executed on October 1, 1991 and filed with the State Water Resources Control Board (State Water Board):

- (a) Permittee shall install a permanent staff gauge on the concrete abutment of an existing Napa County bridge located across the principal unnamed tributary to Sulphur Creek located in the SE¼ of NW¼ of Section 3, T7N, R6W, MDB&M as shown on a map on file with the State Water Resources Control Board. Flow measurements will be taken by the permittee's engineer in the main channel of Sulphur Creek and said tributary during various flows of the 1991/1992 diversion season. At least one set of flow measurements shall be taken when discharge in the main channel of Sulphur Creek is approximately 3.0 cubic feet per second or less.
- (b) These measurements will provide a basis for correlation between the flow in the main channel of Sulphur Creek and said tributary in order to determine the contribution of flows from each watershed and establish minimum flow at said bridge. Measurements shall also be taken once during each of the 1992/1993 and 1993/1994 diversion seasons when flows are approximately 3.0 cubic feet per second in the main channel of Sulphur Creek to verify that the correlation of the two channels has not been altered by conditions in the greater Sulphur Creek watershed.
- (c) Flow measurement data shall be provided to the Department and the State Water Board. Access shall be provided to the gauge at all times to Department personnel. Permittee shall, upon written request from the Department, recalibrate the gauge at the bridge for the duration of the permit.

Inclusion in this permit of certain provisions of the referenced agreement shall not be construed as disapproval of other provisions of the agreement or as affecting the enforceability, as between the parties, of such other provisions insofar as they are not inconsistent with the terms of this permit. (0000024)

15. Permittee shall install and maintain an outlet pipe of adequate capacity in the dam as near as practicable to the bottom of the natural stream channel in order that water entering the reservoir which is not authorized for appropriation under this permit can be released. Before starting construction, permittee shall submit plans and specifications of the outlet pipe to the Chief of the Division of Water Rights for approval. Before storing water in the reservoir, permittee shall furnish evidence which substantiates that the outlet pipe has been installed in the dam. Evidence shall include photographs showing completed works or certification by a registered Civil or Agricultural Engineer. (0050043)

16. Permittee shall meter diversions to offstream storage and withdrawals from reservoir storage. Records of metered diversions shall be supplied with the next annual progress report submitted to the State Water Resources Control Board by permittee. (0060046)

17. Permittee shall install and properly maintain in each reservoir a staff gage, satisfactory to the State Water Resources Control Board (State Water Board), for the purpose of determining water levels in the reservoirs.

Permittee shall record the staff gage readings on or about October 1 of each year, and March 15 and April 15 of the following year. Such readings shall be supplied with the next progress report submitted to the State Water Board by permittee.

Permittee shall allow a mutually acceptable representative of the Napa Group of the Sierra Club and of Mr. Seward R. and Mrs. Betty L. Foote, and their successors in interest, reasonable access to the reservoir for the purpose of verifying staff gage readings and determining water levels in the reservoir.

(0070047)

(0100047)

18. For the protection of fish and wildlife in Sulphur Creek, permittee agrees to bypass a minimum surface flow of 3.0 cubic feet per second in the main channel of Sulphur Creek immediately downstream of Point of Diversion #1. Permittee shall be precluded from diverting water from Sulphur Creek at Point of Diversion #1 whenever the flow in said main channel of Sulphur Creek is determined to be less than 3.0 cubic feet per second.

(0140060)

19. Diversion of water to storage between March 15 and April 15 under this permit shall be made only when there is surplus water available as determined by the Napa River Watermaster.

(0000999)

**This permit is issued and permittee takes it subject to the following provisions of the Water Code:**

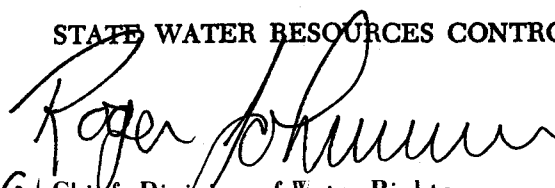
Section 1390. A permit shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division (of the Water Code), but no longer.

Section 1391. Every permit shall include the enumeration of conditions therein which in substance shall include all of the provisions of this article and the statement that any appropriator of water to whom a permit is issued takes it subject to the conditions therein expressed.

Section 1392. Every permittee, if he accepts a permit, does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefor shall at any time be assigned to or claimed for any permit granted or issued under the provisions of this division (of the Water Code), or for any rights granted or acquired under the provisions of this division (of the Water Code), in respect to the regulation by any competent public authority of the services or the price of the services to be rendered by any permittee or by the holder of any rights granted or acquired under the provisions of this division (of the Water Code) or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State, of the rights and property of any permittee, or the possessor of any rights granted, issued, or acquired under the provisions of this division (of the Water Code).

Dated: OCTOBER 02 1992

STATE WATER RESOURCES CONTROL BOARD

  
V. Chief, Division of Water Rights